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Via Regular Mail
 Honorable Valerie E. Caproni
 United States District Judge
 Southern District of New York
 40 Foley Square
 New York, NY 10007

USDC SDNY
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Re: CFTC v. Alexandre, et ano., No. 22 Civ. 3822 (VEC)
Motion to Reconsider Motion for Return of Seized
of Seized Property in Response to Judge's Order

Dear Judge Caproni:

Mr. Alexandre respectfully submits this motion to reconsider the motion for return of seized property in response to the Judge's Order denying the motion subsequent to the Receiver's objections to the motion. Mr. Alexandre moves this court pursuant to Fed. R. Civ. P. Rules 59(e), & 72(a), (b)(2), for reconsideration of the Court's Order of March 25, 2024 denying the Motion For Return of Seized Property, unlawfully seized as a result of a warrantless search and seizure conducted in violation of the Fourth Amendment to the United States Constitution. In the alternative, Mr. Alexandre respectfully requests that this motion be docketed as a NOTICE TO APPEAL, pursuant to FRCP Rule 72(a) noting that the District Judge in the case must consider timely objections and modify or set aside any part of the Order that is clearly erroneous or is contrary to law. See U.S. v. Harlan, 26 F.4th 566, 569 (2nd Cir. 2022) stating [A] district court abuses its discretion if it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence, or render's a decision that cannot be located within the range of permissible decisions.

As a preliminary matter, Rule 59(e) of the Fed.R. Civ. P., "does not set forth any grounds for relief and the district court has considerable discretion in reconsidering an issue. Motions for reconsideration should not be used to raise legal arguments which could and should have been made before the judgment or order was issued. See Lockar, 163 F.3d at 1267. The standard for granting reconsideration is strict and will generally be denied unless the moving party can point to controlling decision or data the Court overlooked. See Shrader v. CSX Transportation, Inc. 70 F.3d 255, 257 (2nd Cir. 1995). This motion for reconsideration is based on both facts and controlling law the Court apparently overlooked in construing Mr. Alexandre's motion for the return of seized property pursuant to the Fourth Amendment to the United States Constitution, and the Defendant's lack of due process affording him an opportunity to respond to the objections before the ruling on the matter and the Judge's Order directing the Clerk of Court to close the open motions at Dkts. 278 and 283. Consequently, the court should reconsider and vacate the order of March 25, 2024, Dkt. 284. Furthermore, the court should adjudicate and GRANT this motion for the return of seized property without conditions due to a warrantless search and seizure, in direct violation of the Fourth Amendment to the US Constitution, by the CFTC-Court-Appointed Receiver, and the court should declare the search and seizure unlawful without consideration of the Receiver being an agent of the Court.

BACKGROUND

The Defendant, Mr. Alexandre, filed a motion for the return of his personal laptop due to a warrantless search and seizure as documented in prior filings by and through his legal team.

The primary reaction of the Judge on March 18, 2024 was to issue a warning stating: "to the court's understanding the BOP does not permit inmates to possess laptops," showing a predisposition to deny the motion "absent a showing that the Bureau of Prisons (BOPs) consented to allowing Mr. Alexandre to possess the laptop", and ordered the Receiver to "respond to Mr. Alexandre's claim that the Receiver unlawfully obtained the laptop" no later than March 25, 2024. Cleaned up. It was clear that the Judge was unwilling to address the merits of the claim a priori.

After the Receiver responded to the motion as ordered, the Judge did not allow the Defendant the opportunity to respond to the objections of the Receiver. Instead, the Judge issued a final order when she instructed the Clerk to close the open motions at Dkts. 278 and 283 leaving the Defendant no other alternative but to file a motion for reconsideration under Rule 59(e). It's worth noting on the record that this pattern is prevalent in each and every motion made by the Defendant-movant in this action: (Motion, objection, closure), without affording the possibility to object to the Receiver's response pursuant to FRCP Rules 72 (a), (b)(2), responses to objections.

GENERAL STATEMENTS

A- Mr. Alexandre, the Ex-CEO and founder of EminiFX, Inc., is currently incarcerated in Allenwood-Low Federal Correctional Complex (FCC) of the Bureau of Prisons (BOPs) in the State of Pennsylvania for the past six(6) months serving 108 months sentence in the Criminal case adjudicated in the Honorable Judge Cronan's chambers as a result of a case jointly brought up by the Commodity Futures Trading Commission (CFTC) and the office of the United States Attorney General through their respective AUSAO assigned to the case in the Southern District of New York (SDNY).

B- Mr. Alexandre is a full time GED [1] student at the BOPs and entrusted his legal defense to a law firm throughout the Criminal and Civil proceedings for about 21-22 months. Immediately following his incarceration, Mr. Alexandre extensively placed his focus on the rehabilitation program at the BOPs and completed over 20 courses/classes over the past six months, in addition to the full time GED exams preparation course mandated by the BOPs. As such, Mr. Alexandre only desire was to get this instant action behind him to allow the funds to be returned to the investors, and get on with the second chapter of his life. However, something significant happened prompting him to take over his legal defense and commit himself to vigorously defend against each and every claim in the CFTC Complaint.

C- On December 6, 2023 at 9:06 pm EST., Mr. Alexandre instructed his attorney to sign the final agreement of the civil action with the CFTC and share back the duly executed contract with him, that would have authorized the Receiver to immediately disburse the \$18 Million dollars to the CFTC as fines levied against EminiFX or incur endless hefty penalties for every day the funds are not paid or transferred via wires as paid in Full.

D- On January 19, 2024, at 10:31 am EST., Mr. Alexandre received an email request

from his attorney for the Receiver to come visit the prison at Allenwood to get Mr. Alexandre to apply his fingerprints to unlock the laptop. Mr. Alexandre replied in earnest to his attorney asking how could the Receiver could have asked such request and him the attorney not reminding the Receiver that Mr. Alexandre's position is to get his laptop back because the the laptop was obtained unlawfully without a warrant, knowing that Mr. Alexandre, by and through his attorneys, filed a complaint against that unlawful possession as a result of an anlawful search and seizure as filed in the Criminal docket while the civil docket was stayed. Interestingly, Mr. Alexandre never got a response back from the Receiver and from the Attorney with the answer to these critical questions; and the trip never materialize. However, Mr. Alexandre's position was open to hear back from the Receiver about WHAT we needed to talk about and after defining the terms of that encounter with the presence of counsel, the visit could have been scheduled. It was a complete silence for 18 days until February 6, 2024.

E- On February 6, 2024, Mr. Bove, the lead attorney of the legal defense team, without answering the prior issues raised at paragraph D on January 19, 2024, came back on email with a response update from the CFTC (60 days later) refusing to sign the final agreement they themselves drafted and submitted to Mr. Alexandre for signing, and the CFTC added more conditions for acceptance and this time also requested for Mr. Alexandre to give up more consitutional rights and to accept [all] the falsehoods alleged in the complaint as FACTS and TRUE. Mr. Alexandre responded with contending that he gave up enough already and was now extremely doubtful of the piece meal strategy of the regulators coming back with small group of changes over and over on the pretense that they forgot to add them before; and that the CFTC was negotiating in bad faith. Hence, Mr. Alexandre withdrew his December 6, 2023 authorization to sign from his attorneys -authorization reaffirmed on December 14, and further reaffirmed on December 15, 2023 ahead of the December 18, 2023 deadline set for the CFTC.

F- On that same day, on February 6, 2024, Mr. Alexandre also informed his lawyer of his intentions to rebuke the CFTC attempts to butcher the negotiations that took us all months to achieve, and expressed his concerns about the latitude the CFTC has to behave in such a manner. Mr. Alexandre was contemplating to get this resolve promptly or to take over the lead of his legal defense team as pro se, because the CFTC was negotiating in bad faith. In the days following that breakdown in communications and the explicit bad faith of the CFTC, against the advice and "extreme warnings" of counsel, Mr. Alexandre instructed his attorney to submit a withdrawal request to the honorable Judge Caproni for consideration, Which he did.

G- On February 14, 2024, after numerous last minutes warnings and negotiations, the CFTC finally accepted to backtrack (walk back) on a couple of last minutes changes, but would not move to renege on the falsehoods of the allegations that Mr. Alexandre set forth as conditions sine qua non to reauthorize his signature. Hence, due to communications breakdown, and irreconcilable differences, the negotiations of the final agreement fell off, and Mr. Alexandre, by and through his own rights, took over his legal defense pro se, and moved this court for the approval of the transition of the withdrawal legal defense team.

H- On February 15, 2024, Mr. Alexandre received confirmation from his attorney that the Judge GRANTED his motion to withdraw, and for Mr. Alexandre to proceed pro se. The order also ordered the Clerk of Court to lift the stay as of Feb. 20, 2024.

I- On March 11, 2024, Mr. Alexandre moved this court for a MOTION FOR RETURN OF SEIZED PROPERTY taken by the Receiver unlawfully through a warrantless search and seizure in the early morning hours of May 12, 2022, from the private home of the Defendant, immediately after the Receiver got confirmation from the FBI that they had taken Mr. Alexandre with them to the FBI Headquarter (HQ). And, this is after the FBI instructed the Receiver not to go onsite with them to interfere with their operations protected by a judicial warrant. The Receiver decided to wait close by to ambush Mr. Alexandre's family, knowingly and willfully, as he admitted knowing by coordinating with the FBI that morning that Mr. Alexandre was "not present" to answer his inquiries and for any lawful search and seizure.

J- On March 25, 2024, after the Receiver filed a response to the Judge's Order to address "Mr. Alexandre's claim that the Receiver unlawfully obtained the said laptop" [emphasis added], the MOTION FOR RETURN OF SEIZED PROPERTY was subsequently DENIED without prejudice by Honorable Judge Caproni without any legal analysis or basis, AND without allowing Mr. Alexandre the opportunity to respond to the objections of the Receiver submitted to this court by and through his attorneys. Cut short from getting the relief and his due process, Mr. Alexandre was left deprived of any other procedural choices, in this instant action, but to file a motion for reconsideration under FRCP Rule 59(e) & 72(a), (b)(2).

Hence, since taking over the lead of his legal defense, on about 45 days ago, Mr. Alexandre's first significant action, among others that followed suit, was to attempt to right this wrong against the violation of his Fourth Amendment to the United States Constitution and filed a Motion for the Return of Seized Property through a warrantless search and seizure by the Receiver.

[1] Mr. Alexandre is a full time GED Student at the Bureau of Prisons (BOPs) and received his High School (H.S.) Diploma on or about 34 years ago. The BOP requires an official transcript of a foreign High School Diploma to be sent directly to the Education department of the BOPs by the ministry of Education of the foreign Country. Haiti has political unrests and cannot send it at this time.

MEMORANDUM OF POINTS AND AUTHORITIES

Fourth Amendment principles governing searches and seizures apply only to "governmental action" and are thus wholly inapplicable to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any government official. See *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S.Ct. 1652, 80 L. Ed. 2d 85 (1984) (Internal quotation marks omitted.) A "search conducted by a private individuals at the instigation of a government officer or authority" may sometimes be attributable to the government "for purposes of the Fourth Amendment," See *Cassidy v. Chertoff*, 471 F.3d 67, 74 (2nd Cir. 2006); but private actions are generally "attributable to" the government only where "there is sufficiently close nexus between the State and the challenged action of the ...entity so that the action of the latter may be fairly treated as that of the State itself," See *United States v. Stein*, 541 F.3d 130, 146 (2nd Cir. 2008) (Internal quotation marks omitted). The requisite nexus is not shown merely by the government approval of or acquiescence in the activity, or by the fact that the entity is subject to government regulation. "The purpose of the [close-nexus requirement] is to assure that constitutional standards are invoked only when it can be said that the [government] is "responsible" for the specific conduct of which the [accused] complains." *Id.* at 146-147 (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1004, 102 S.Ct. 2777, 73 L. Ed. 2d 534 (1982); See, e.g., *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 614, 109 S.Ct. 1402, 103 L. Ed. 2d 639 (1989) (Whether a private party should be deemed an agent or instrument of the Government for Fourth Amendment purposes necessarily turns on the degree of the Government's participation in the private party's activities...)) as in the case of this instant action by the CFTC Court-Appointed Receiver, there is no dispute that He is a government agent.

The need to determine whether the Receiver conducted his search and seizure as an agent or instrument of the government was what led the District court to Order the Receiver to respond to Mr. Alexandre's claim of unlawful search and seizure by an agent of this court. See March 25, 2024 response from the Receiver Dkt. 284. After considering the Receiver's response, the court immediately ruled that "the Receiver's search and seizure constituted a lawful search to recover stolen funds" and was therefore beyond the reach of the Fourth Amendment," March 25, 2024 Order, Dkt. 284.

Thus the motion for return of seized properly was DENIED, Dkt. 284, on the Receiver's intention to recover stolen funds. It's worth nothing that rationale is not challenging the "attributable to" the government as per the close-nexus requirement, and therefore cannot stand to satisfy the purposes of the Fourth Amendment to limit the degree of the government's intrusion in a citizen's life without due process and safeguards.

The Defendant moved for reconsideration to suggest that the court overlooked a significant issue raised in the claim of the Fourth Amendment violation arising from the warrantless search and seizure by a government agent/actor. Mr. Alexandre hereby makes the effort in this court to develop a record as to any conduct by the Receiver in the execution of the warrantless search and seizure of his personal laptop, inter alia, searched and seized from his private residence while he was being interrogated at the NY FBI headquarters. Mr. Alexandre believes that there is a strong foundation that the Receiver violated his Fourth Amendment rights, and alternatively requests that this matter be considered for

his Appellate contention that there was action by the Receiver on the morning of May 12, 2022 that violated his Fourth Amendment rights. Henceforth, Mr. Alexandre contends that there is a viable basis for disturbing the district court's denial of the motion for the return of seize property.

The Receiver responded to the ruling by providing a lengthy reply to the Motion for the Return of Seize Property by publishing the personal information of EminiFX ex-employees, Mr. Alexandre's personal information, Mr. Alexandre's immediate family member's personal information (his home street address) in an attempt to harass the Defendant's immediate family and ex-employees of EminiFX; and to intimidate the Defendant in his pursuit of Justice and fairness. The answer was filed and made public to the world on the open docket. Mr. Alexandre is shocked that the Receiver's highly competent and experienced attorneys and law firm did "not" prevent him from committing such act, since almost every filing of the Receiver is made "secret" under seal, per the theory that this is a very public case with a very large number of investors that he wants to protect the receivership contractors from. He does not want the investors to see the names of his employees and contractors getting paid from their funds. Yet, in the same breathe, the very first opportunity he had, he started the reckless and malicious publishing, in the open (unredacted), of the names and personal information of family members, ex-employees, and third parties, not party in this instant action. As a CFTC-Court-Appointed Receiver the public expects more from an officer of the court, and with his competent legal team, this is not a mistake but an attempt to harass, harm and intimidate. It was made willfully in an attempt to harass immediate family members, and the ex-employees of EminiFX who are not party in this instant action.

Before Mr. Alexandre could receive a copy of the answer in the mail, and respond to this egregious act of malicious posting, (something caused the Receiver to reverse course). The Receiver refiled the motion with the information redacted and a request to seal the private information. This is definitely too late because one cannot remove information from the internet that easy. Once it is posted and downloaded, it is out there and irretrievable. One may wonder why the Defendant is raising his Fifth Amendment rights against this Receiver, among other things. This is just not carelessness, this amounts to gross negligence and malicious posting because the damage is significant and this is coming from an agent of the court who is an officer of the court as a professional attorney member of the BAR. This pattern of gratuitous attacks of the Defendant serves no legitimate purpose. The reasoning explained by the Receiver was: since there is no protective order yet filed, it is still time to cause some damages. In the process of inflicting such damages, he inadvertently posted his own personal information and turned around and requested permission from the judge to seal his information. Mr. Alexandre opposes such request on the basis that the Rule clearly says that constitutes a waiver of protection of identifiers stating in whole and in part "a person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal. Mr. Alexandre opposes the ruling allowing the Receiver to mislead the court in this request.

Had Mr. Alexandre known that the Receiver would commit such an horrible act, he would indeed file a protective order against him instructing him to refrain from posting any private information about his family, ex-employees, and any private information for individuals related to Mr. Alexandre in any shape or form,

not a party to this action. Obviously, as a CFTC-Court Appointed Receiver, Mr. Alexandre had higher expectations and held the Receiver to higher standards, but Mr. Alexandre stands corrected. From now on, the Defendant will file a set of protective orders and or a gag order request if necessary to limit the damages that the Receiver is intent on causing to unrelated parties to this action as a form of retaliation for Mr. Alexandre's decisions to vigorously defend himself against each and every claims in this civil action.

The Defendant hereby seeks a reconsideration seeking relief from the denial of the Motion for the Return of the warrantless search and seizure, his personal laptop. Mr. Alexandre believes that the District Court erred by failing to Uphold his Fourth Amendments rights by ignoring the gross abuse of power of its agent: the Receiver, on the morning of May 12, 2022. The motion raised the claim providing the authority and controlling cases to support the request, and the DENIAL did not address the merits of the motion before the Judge. Without citing any authority nor addressing any merits, the Judge issued a ruling without giving the Defendant an opportunity for a traverse-reply to respond to the Receiver's objections since the Defendant is the movant in this motion.

Furthermore, the Defendant is equally disturbed by the wording of the Judge's sua sponte ruling stating in whole and in part without any readily apparent reason "in his effort to return--stolen funds-- to EminiFX Customers." This is disturbing for the first time in twenty months for Honorable Judge Caproni to aver that conclusory statement wholly without merit for a case that is in its infancy at the Complaint/Answer stage, setting a new direction in this action influencing the jury pool. Mr. Alexandre believes that the Judge's answer shows predetermination sub judice.

Mr. Alexandre would like to underline seriatim the tension between the Judge's primary response and warming of her unwillingness in releasing the laptop inter alia, unless released to the BOP's, showing no interests in a fact finding mission or an evidentiary hearing ad initio; and the Receiver's position willing to return the warrantless search and seizure product ad interim, to wit, the personal laptop (albeit with some conditions that should be addressed at discovery).

In his response to the court, the Receiver alleged the following as arguments to explain his actions. The Receiver, is continuing to mislead the court, the public and the EminiFX investors by inferring allegations that he knows or should have known by now to be untrue, and must have known as an officer of the court due to his position and the role he played and continues to play in the joint-investigation as an agent providing data to both the CFTC and the AUSA offices. Out of an abundance of caution, Defendant presents facts below that contradict and expose the attempts in furtherance of the faulty assumptions that led to this action brought by the CFTC. For all instance purposes, the Defendant will treat the CFTC's position and the Receiver's interventions as one and the same since they agreed in principle that they share congruent views on that filing.

1- The Receiver knows the difference between warrantless search and seizure and an abuse of power through a warrantless search and seizure. However, fueled by the motivation to serve his sponsors, he did it anyway. The Defendant is ready to file an interlocutory appeal to resolve this matter resulted in an error of

law condoning the abuse of his Fourth and Fifth amendments rights. That is simple matter of constitutional law, a simple construct. The question before the Court is: on the morning of May 12, 2022, did the Receiver secure a warrant from a magistrate or a district Judge before he proceeded to execute a warrantless search and seizure of the Defendant's personal laptop at his private residence that he knew was the dwelling place of the Defendant and his family because he was on the phone coordinating with the FBI as for when he can make his move. Mr. Alexandre argued to the Code and provided controlling authority that dictates the ruling on this matter. See motion Dkt. 279.

2- The Receiver as an agent of the CFTC and court & the AUSA acting as such to make the EminiFX company look bad in the hope that EminiFX and its investors will lose the case, and to facilitate the CFTC to prevail and take dozens of millions to support the AUSA to win and secure a conviction, and for the Receiver and his friends to eat up most the millions left, leaving the investors running around trying to find out the answer to this question: "where did the money assembled by the Receiver go?" Hence, the Receiver can never be trusted in that action and he proved it. Only his skewed data is provided as proofs, yet he cannot even explained most of it, his excuses he did not find data. The Defendant intends on getting these answers in cross-examination if/when we get to the merits phase of this action in the jury-trial phase not in-limine at the start of the case.

3- In his effort to continue to mislead the court, the public and the EminiFX investors, the Receiver by and through his attorneys, advanced an argument that he wanted to get the laptop to gain access to the Defendant's GMAIL account. The reasoning is: because usually, there is two-factor authentication (2FA) code that only resides on that said laptop that would open the door to the GMAIL and his technicians promised "him" that they could then run freely through that GMAIL account, run all sorts of queries, with the power to remove and delete anything they dislike and finally return the laptop sanitized to the Defendant with the power vested in them by the Constitution of the United States. This is the most dangerous and baseless argument ever read in a motion.

Technically speaking, email two-factor means two elements, i.e., a password and (\pm) a code (one-time-passcode [OTP]) through a separate app providing that kind of code. Hence, that excuse is baseless and does not even worth the weight of an argument. Plainly speaking, even if you would get the laptop, with the example of the two-factor above, you still cannot access the GMAIL account--without the second factor, that's why it's called two-factor authentication(2FA). Obviously, preying on the good will of judges, instead of educating the court, the Receiver is making a foul of the justice system. That argument is not a mere assertion, it is a naked lie.

4- When it comes to the related argument by the Receiver's request to be able to sanitize and delete the Defendant's personal data at will, it is interesting that the Receiver could argue that he holds more power than the Constitution to rampage across an individual's personal life without any safeguards of the constitution, freely removing and deleting whatever he likes or dislikes, without a judgement on the merits from this action emanating from a verdict by the trier of fact, inter alia, the Judge or the Jury trial in context and a court order allowing to delete personal data which is highly unlikely. It is as if we are looking at the doctrine of res judicata, where all is done, the Jury in this action has already deliberated and found Mr. Alexandre the losing party in this civil action before Judge Caproni and found the Defendant liable

of the liability brought forth in this action. Not only this statement to destroy content on his personal laptop is infringing upon the First, Fourth, Fifth, and Sixth Amendments rights of the Defendant, but this is utterly premature and conclusory in light of the civil action process that is not yet concluded by the Jury in this action. Hence, the Receiver, by and through his attorneys, is once again, as done in the ex-parte Statutory Restraining Order (SRO), attempting to bypass the due process and declare Mr. Alexandre guilty on all charges replacing the due process and ready to pull the trigger to sanitize everything and anything that the Defendant may use to fight this civil action, allegedly with the power granted to the Receiver. This is not only premature but preposterous when we know based on facts and past sharing that the Receiver under the cover of being a court-appointed Receiver, is acting as an agent of the Commodity Futures Trading Commission (CFTC) and the Assistant U.S. Attorney (AUSA) to gain access to data they would otherwise need to secure warrants for, through contempt proceeding, with due process allowing the Defendant to assert his rights and to oppose such requests via proper litigation and in the proper venue.

5- Mr. Alexandre understands the desire of the court to protect one of own Court-Appointed agent. However, lady Justice is supposedly blind. It will serve the community well to show justice and fairness no matter where justice leads. That action clearly fails to provide constitutionally mandated procedural safeguards. The Judge in her ruling made an interesting statement about the Receiver's efforts to return stolen funds to EminiFX Customers. Mr. Alexandre objects to that language. That statement in conjunction with her other rushed decisions are indicators that she is predetermined. This is a statement without proofs from this honorable bench showing how much the Receiver influenced the Judge's opinions at the beginning of a proceeding where we are only at the entry of the procedural phase and nothing yet done on the merits.

The phases are usually as follows: a) Complaint --> b) Answer --> c) Pre-trial Conference Issues --> d) Discovery/Dismissal --> e) Jury Selection --> f) Trial Procedures --> g) Judgement --> h) Post-Trial Issues / Appellate Process.

While we are at step (a), that language is nothing less of poisoning the Jury pool as there is nothing yet file on the records to justify such position by the Judge. Obviously, if that statement was coming from the plaintiff (CFTC) the Defendant would have had the opportunity to cross-examine and object. How did the Judge reach the --stolen funds-- conclusion? Mr. Alexandre does not envision how the Judge can be impartial moving forward. Henceforth, Mr. Alexandre hereby reserves the rights to seek further reliefs from the justice system in due time. There appears that this conclusion lacks the analysis into the required factors that go along with reaching a decision in this action to resolve this motion for the return of the warrantless search and seizure, the personal laptop of Mr. Alexandre.

6- On the morning of May 12, 2022, the Receiver has reported talking about Mr. Alexandre's wife at the door, and at times about the CFO, and other times to someone who answered the door. The Receiver admitted that at that time it was unclear [to the Receiver] whether there was EminiFX property located at the House that the Receiver had an obligation to secure." See Dkt. 284 at 5. Mr. Alexandre will save that statement as an "admission." Knowing that he had no legal basis for the search, the Receiver therefore decided not get a warrant. There is a wanted confusion added to the mix at will in an attempt to blur the lines between the CFO and spousal privilege. According to the rule of conjec-

tural choices, the principle that no basis for recovery is presented when all theories of causation rest only on conjecture ([a] guess; supposition; surmise), the Receiver knew that his actions were wrong. Conjectural choice, Black's Law Dictionary (11th ed. 2021). For a moment, on the morning of May 12, 2022, the Receiver forgot all about spousal privilege, and/or the laws about private dwelling, privacy interests requiring a judicial warrant to authorize the search and seizure. Since he did not know what he was looking for, he could not have secured a warrant. Therefore, he decided to bypass the constitution and send his agents regardless, hoping that the Judge would understand and protect his actions. It was not until later when my legal team started to assert spousal privilege that he began to realize that his position was untenable and fell flat on its face not able to pass muster.

7- Home/Dwelling: Or, the offices of EminiFX, Inc. In addition to be unprofessional conduct, this appears to be a tortious conduct when judged by the standards of the actors' profession—a lawyer acting as a CFTC-Court-Appointed agent. When an officer of the court, a lawyer turned Receiver, acting in a double role as now agent of the court is conducting warrantless search and seizure, this is deemed a dangerous wrongful conduct, and an act taken in violation of a legal duty; an act unjustly infringing on the Defendant's constitutional rights by the very same court who suppose to protect his rights. That argument by the Receiver speaks into the ineffectiveness and dishonesty of the Receiver who, to support that assertion proffered Ex. 1., to show that the private residence of the Founder of EminiFX was an office of EminiFX. Hence, he had the rights to barge in and take whatever he wanted, anytime he wanted, and anyhow he wanted, end of story; this is totally unlawful and so wrong on many fronts. Let's review his statement: "Given that Alexandre's house was the official address of EminiFX, and that it was 'unclear' whether there was EminiFX company property located at the home that the Receiver had an obligation to secure..." See Dkt. at 5. Cleaned up. That statement is recorded as an admission that he the Receiver had ZERO basis for the warrantless search and seizure. After admitting all that, yet the Receiver sent his agents requesting the personal laptop instead of attempting to secure a warrant because he knew for a fact he was on a fishing expedition, but he wanted to do something far nefarious, HIDE the laptop, freeze the laptop for 22 months and infringe/impede Mr. Alexandre's ability to search his personal notes on his personal laptop to defend against this instant action brought by the CFTC his recruiter and hiring manager. This is considered an admission of guilt on the record of a willful warrantless search and seizure.

Furthermore, the Receiver is also misleading the court with the Ex. 1 proffered as showing the official address of EminiFX on that certificate as the 2nd address the Receiver had for the EminiFX office. The Receiver went straight to the 34th Street, NY office space with the FBI onsite and said he sat in the conference rooms in that location because he knew where the official address was located. Otherwise, the Receiver would have gone to Mr. Alexandre's living room and sat there instead. If the Receiver did his due diligence before rushing to proffer falsehoods to the court, he would have not proffered that exhibit to the court, because at the time of his warrantless search and seizure, on the morning of May 12, 2022, the Secretary of State of New York completed the request to update the mailing and corporate address of EminiFX, inc., to be ONLY the 34th address. A request that took the EminiFX corporate counsel about six (6) months due to the backlog of Covid-19, but nonetheless it was completed. Since everyone was going back full time in the workspaces, the mailing address

was more convenient and appropriate for service from and by the State. In every Bank documents and any other contracts, including our corporate website, the 34th street address was the only official address printed and the Receiver knew that. He knew, should have known, and subsequently Mr. Alexandre believes that the Receiver has a duty to be thorough and truthful with the court. A lawyer has an obligation to provide true information to the court, and update the court of any mistake throughout the entire proceeding pursuant to the Model Rules of Professional Conduct (MRPC) Rule 3.3 Candor toward the tribunal stating in whole and in part, [a] lawyer should not knowingly:

- 1) make false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- 2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclose by opposing counsel; or
- 3) (a) in an ex-parte proceeding, [like this action] a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decisions, whether the facts are adverse.

8- In the alternative, what if the private dwelling of Mr. Alexandre was in fact the EminiFx official address for the sake of a legal argument? The first and most important Fourth Amendment principle with respect to searches and seizures is that searches must ordinarily be cleared in advance as a part of the judicial process. See *U.S. v. Chambers*, 395 F3d 563 (6th Circ. 2005). And the controlling Jurisdiction in this action concurs as follows, (1) One's home is sacrosanct, and unreasonable government intrusion into the home is the chief evil against which the wording of the Fourth Amendment is directed. (2) The Fourth Amendment prohibits a general warrant for good reason. Worst, there is absolutely NO warrant at all in this conduct. This was a blatant violation and a fishing expedition confirmed and admitted by the Receiver on record. See *Chambers*, supra.

The Supreme Court made it clear that home search pursuant to WARRANT that failed to describe person or things to be seized held to violate Fourth Amendment; Federal agent who led search held not entitled to "qualified immunity" from suit with respect to violation. See *Groh v. Ramirez U.S.*, 157 LE2d 1068, S.Ct. (2004). Emphasis added.

The Fifth Circuit concurs and explains that because the Fourth Amendment requires "particularity", "open-ended" or "general" warrants are constitutionally prohibited. See *Williams v. Kaufman Country*, 352 F3d 994 (5th Circ. 2003). Emphasis added. What we have in context is worse, in this conduct there is NO warrant at all.

It's interesting that this laptop taken as a result of a warrantless search and seizure has been through multiple iterations of nobody knows what and where. Reading the kind of gymnastic made by the Receiver, by and through his attorneys, one may wonder if we will ever uncover the truth in this story. Even police officers are not free, absent a search warrant or exigent circumstances, to enter dwelling in order to "FREEZE" the scene until a search warrant can be obtained. See *U.S. v. Desseaux* 429 F3d 359 (1st Circ. 2005). That laptop has seen better days but it said to have been frozen for the past 12-23 months.

There is another vantage point in the attempt to mislead the court by saying Mr. Alexandre's home was in fact EminiFx official address. To concede that point for argument sake will lead to another unlawful significant violation.

Absent exigent circumstances, police must have SEARCH WARRANT to ENTER ANY AREA in place of business that is OFF LIMIT to the general public. As a pro se defendant, I know that, a lawyer with that much responsibility and represented by a highly competent law offices cannot pretend not to know that doctrine. See *O'Rourke v. Hayes*, 378 F3d 1201 (11th Circ. 2004). Therefore, the Receiver knew that even if it would be an official "address" he needed a judicial warrant.

Henceforth, this is the reason why the Government is required to show voluntary consent to search by a preponderance of evidence BEFORE obtaining the search warrant. See *U.S. Larkos Key*, 462 F3d 965 (8th Circ. 2006).

Mr. Alexandre is aware that he is entitled to bring independent civil action for return of property even if the underlying criminal case has been closed. See *U.S. v. Guzman*, 85 F3d 823 (1st Circ. 1996).

The conduct we face in this action is simple. Unlawful search and seizure can never be justified by its fruits. See *Parkhurst v. Trapp*, 77 F3d 707 (3rd Circuit 1996).

Under the Supreme Court's FRANKS decision, search warrant is invalid if affiant knowingly and intentionally, or with recklessly disregard for the truth, includes false statement in warrant affidavit. This is worst in this case, there is no warrant, just a violation in an attempt to "FREEZE" the laptop until a warrant can be obtained. The Receiver knew he was wrong.

9- The Receiver is talking about consent, but seems to lack the courage to deny that the laptop is Mr. Alexandre's personal laptop. Although he is aware of the previous filings taking issues with the manner in which the personal laptop was obtained in direct violation of the Defendant's Fourth Amendment constitutional rights. Mr. Alexandre completely objects to the argument of consent, since the Receiver's agents were --specifically--asked by Mr. Alexandre's spouse and his brother-in-law on the phone comforting her when she called to share the news of the arrest: Do you have a warrant? The agents said NO, but they have a Court Order to get the laptop. One can only imagine the level of confusion on the day of the arrest, minutes after the FBI departed and sent an SMS (text message) or called the Receiver who had a team hiding in ambush close by, waiting to jump in the spur of the moment of shock, to surprise Mr. Alexandre's family and take advantage of the confusion. There was absolutely NO consent, there were objections and apprehensions without resistance (because they said they had a court Order), Mr. Alexandre was not present nor provided consent either, his family surrendered the laptop knowing that Mr. Alexandre would be able to deal with that violation through the judicial process. This was a gross abuse of power, a trap set by a court-appointed agent who was supposed to uphold the law. Mr. Alexandre hereby rejects this attempt to lessen the offense conduct and requests for the return of his personal laptop without conditions pursuant to his Fourth Amendment Constitutional rights.

10- The Receiver is talking about access to GMAIL that pertains to EminiFX. Mr. Alexandre by and through his previous legal team already asserted his rights when it comes to handing over anything to the Receiver acting as a portal to the AUSA and the CFTC in an attempt to bypass the constitutionally mandated procedural safeguards put in place that guarantees protection against governmental intrusion and abuse. Mr. Alexandre, now pro se, reasserts the same Fifth Amendment rights for this instant action and post-conviction remedies, and will file the necessary protective orders if/when we get to discovery during the pre-trial issues phase. The Receiver knows that Mr. Alexandre has his private and confidential attorney-client emails in his GMAIL account that he will use to defend against this instant action

and post-conviction remedies. Hence, this is not something Mr. Alexandre is willing to compromise. It is no surprise that the Receiver wants to gain full access to Mr. Alexandre's GMAIL and share them back with Mr. Alexandre under strict conditions that the Receiver will set.

Disclaimer: "Mr. Alexandre's attorney warned him that if he did not sign the final agreement, the Government can use the Receiver to go after him, his family, and his relatives, in retaliation." "Mr. Alexandre's response to his was that he considered himself warned." However, even using the personal GMAIL as excuse, Mr. Alexandre did NOT expect the brutal retaliation to be that gross and consequential in the way the Receiver did it beyond what he can ever repair as explained in the following paragraph.

Now we have seen that the Receiver does when he is entrusted with private information, what he did on the public record with EminifX related emails in his possession and Mr. Alexandre's private GMAIL copies in the Receiver's possession: the Receiver just published them on the open docket without any regards to privacy and protection to redact personal contact and identifying information of Mr. Alexandre and his immediate family's welfare, EminifX ex-employees; and/or EminifX users; third parties vendors/contractors; parties not a party to this action; information that could be used to identify employees of EminifX; inter alia, names, userID's, personal contact information; personal full email address; personal private numbers, Mr. Alexandre's full GMAIL address; Mr. Alexandre's full mobile phone number; Mr. Alexandre and his family home street address; Mr. Alexandre's personal laptop full serial number (the claimed laptop) knowingly and willfully even though he knows that as a lawyer that information could be used to the disadvantage of the individuals to whom it belongs... He is reckless, and malicious, as there is no other way to put this. One may never find out the extent of his covert actions although we can judge them by the over actions on the open docket and the ones reported by the parties he dealt with in the past:

- a) When the Receiver arbitrarily shutdown the offices in Manhattan, the Receiver referred the Landlord to Mr. Alexandre for damages and breach of contract claims. Mr. Alexandre as a personal guarantor to this lease on behalf of EminifX, by and through his attorneys, managed to work with the Landlord to have them wait for the proper time to file a claim instead of filing a multimillion dollars lawsuit against Mr. Alexandre.
- b) Although the Receiver and the CFTC had placed a FREEZE on all of Mr. Alexandre's and EminifX assets, the Receiver allowed other parties to sue Mr. Alexandre, against the primary injunction he is enjoying and supposed to enforce, for the Glen Cove Purchase, only to be rebuked by the Judge asking him to take the legal position he was supposed to take from the get go.
- c) The Receiver again, allowed other parties to sue Mr. Alexandre, in a Florida lawsuit v. the 7th-Day Adventist Church, against the primary injunction he is enjoying and supposed to enforce, Mr. Alexandre found out through the motions the Receiver was in fact in close communications with them through the explanations the Receiver provided for the extent of his collaboration with them before the suit came to life. Mr. Alexandre's legal team had to step in and set the records straight removing Mr. Alexandre's name from that suit. (Mr. Alexandre will deal with that suit at a later time.)
- d) The Receiver is also working behind the scene and openly with that same group

led by the disgraced and disbarred attorney, who after spending seven years in prison, instead of finding a honest job to rehabilitate himself, is charging EminiFX investors \$1,000 per person to pay their way into the promising class action lawsuit; the Receiver is working with them and conducting live interviews and media campaign with them to promote defamation, slander and libel against Mr. Alexandre through media appearance and TV Ad-promotions that Mr. Alexandre will address in a separate motion. Mr. Alexandre filed a complaint against that disgraced and disbarred attorney in the Criminal proceeding to bar him from representing himself as an EminiFX investor during sentencing bringing claim against Mr. Alexandre. Honorable Judge Cronan said he would refer the matter to the honorable Judge Caproni. Mr. Alexandre hopes He did just that.

e) It is worth nothing that the Receiver gave confirmation to the Criminal Court that he has the correct dollar figures that were used to "enhance" Mr. Alexandre's years of prison and to justify the total restitution dollars amount that was provided to sentence Mr. Alexandre for the offense conduct as per the guilty plea entered in the plea agreement. Yet, now it appears that the Receiver suddenly is UNSURE about these figures. This is an interesting development, and Mr. Alexandre is very interested in this new position as it may be an issue to raise back in the post-conviction remedies. Defendant hopes that he misread into the Receiver's new positioning and will get to that if and when we cross that bridge during discovery in the pre-trial conference issues phase.

f) The public dissemination action by the Receiver placed Mr. Alexandre and his family in grave danger. A couple of days before the sentencing leading up to hours before Mr. Alexandre's sentencing, his attorney received a phone call from the SDNY Court informing him that all measures had been taken to protect Mr. Alexandre's life against ongoing death threats that they verified to be substantiated. The message was to inform Mr. Alexandre that the U.S. Marshall was notified and all relevant authorities alerted to provide proper security to protect Mr. Alexandre and his family's life, liberty and property. You can imagine the extent of the damage the Receiver knowingly and willfully is causing with that kind of unredacted reckless publication on the open docket. Did he know? Should he have known? What would push him to commit such attack?

g) The Receiver wants to start deleting and sanitizing proprietary code and EminiFX information from Mr. Alexandre's personal laptop or GMAIL account with the power of the Receivership. Mr. Alexandre wants to point out that the Receiver is "not" the owner of EminiFX, inc. He is merely a trustee for the time being in charge of securing and holding the assets of EminFX and Mr. Alexandre's assets until there is a final judicial resolution in this action. And, as such, the Receiver can be removed or terminated at anytime permanently or be replaced by another Receiver. Henceforth, the efforts to go beyond his mandate is quite worrisome and the attempts by the Receiver to cause damages and inflict harm beyond what he can repair will be addressed in future motions during the pre-trial conference issues.

h) The Receiver's job is simply to collect all the assets; keeping them in an interest-bearing accounts as required by law; and, defend the Estate against any claims, and effect disbursement to pay any obligations generated by his actions or prior to his actions; and, primarily returning the investor's funds to their rightful owners on records. Obviously, marred by his level of inexperience, this Receiver has gone further, and took actions that were against

the interests of the EminiFX estate and the investors of EminiFX, but it's worth reminding him of his mandate; and until there is a final judgment in this action, there is "no" final resolution delegating a special mandate to the Receiver to delete and destroy anything that has to do with EminiFX. This is a "recover and preserve mission" not a "search and destroy mission." The Receiver should refrain from acting outside of his mandate and destroy evidence no matter how much he believes he is favored by the court. The founder and owner of EminiFX is Mr. Alexandre, and this instant action can be reversed at anytime giving back EminiFX to the investors. This is how justice works, at the very least what's on paper. Hence the reason why, Mr. Alexandre, the ex-CEO, founder of EminiFX is still an active party with a say in this action; as an acting CEO of EminiFX, the Receiver must be reminded that he can be terminated for cause and/or replaced by someone else as this is an adversarial process in an ongoing proceeding.

i) Furthermore, we know that the proprietary code the Receiver has referenced is in the Receiver's possession on the EminiFX servers and workstations in the office of the CEO that he took over after the FBI left these electronics in his possession to do the work for them [even though the FBI had a warrant to secure all EminiFX electronics]. It appears that the Receiver did not realize that he has all the code necessary to run EminiFX as proprietary code because he came in with the preconceived ideas to shut the company down unaware that he would find a complex operation. Instead of protecting anything, the Receiver said from day one there is NO operation, just a smoke or a make believe. A couple of days into the shoes of the acting CEO, he quickly turned around and requested an emergency motion to hire over 60 people immediately because he found a very complex operation with a large portfolio of real estate (Mr. Alexandre believes that was a proof of how the fishing expedition went. No investigation, or due process, just going on a hunch. The CFTC and the Receiver were ill-prepared and should have known). The request was summarily GRANTED. As far as the physical proprietary code, the Receiver has the "code". For the concept of project, EminiFX is an "ideal, a vision" emanating from the opportunity to use unconventional "DIGITAL ASSETS" to relive "the vision of BLACK WALL STREET" for the benefit of Main Street". Whether one chooses to like it or not, the intellectual property(IP) "code of the vision" inhabits Mr. Alexandre's brain. Mr. Alexandre has learned a trove of legal-lessons through his ordeals, and how the system can construe any actions according to their own understanding. The fact that the Receiver is looking for "proprietary code" that the AUSA testified that never existed is a stark departure from his previous position and statements on the records: there is no operation. That change is welcomed by Mr. Alexandre and speaks volume into the heart of the Defendant's counterclaims.

Although the Defendant did his very best to deal with potential regulations by emailing the CFTC asking for assistance for any other licensing that he would need, they ignored his written requests and six(6) months later, based on faulty assumptions, and a conspiracy to destroy EminiFX for their own benefits, the CFTC with its Receiver came out to destroy EminiFX and its assets (as claimed by Mr. Alexandre in the Criminal proceeding and will be asserted in this instant action during pre-trial conference issues if we get there.) Going through this, Mr. Alexandre is ten times more mature and better prepared to deal with statutory regulations that would apply to an enterprise like EminiFX. A true genie stands for his visions and against injustice no matter where it may come from. Instead of trying to destroy the legacy of Mr. Alexandre, the Receiver should focus his efforts on finding on how he will compensate the EminiFX investors for the damages of the SRO and his own actions. There is no

amount of distraction or magic tricks that can hide these damages. Mr. Alexandre will address these actions during the pre-trial conference issues phase and/or during the Jury trial.

12- There is a misstatement made by the CFTC, echoed in the matter, that Mr. Alexandre approved the actions of the Receiver. It's worth addressing these lies. It's worth remembering how we got there and how the Receiver was imposed on EminiFX and on Mr. Alexandre "EX-PARTE" (one-sided proceeding) without due process. Hence, there is no possibility of approval in an ex-parte proceeding. In fact, Mr. Alexandre disapproved of the actions taken by the Receiver, but for the records, to protect the EminiFX investors victims in that action, and as requested by the ex-parte Statutory Restraining Order (SRO). Throughout the proceeding, Mr. Alexandre repeatedly assisted the Receiver in retrieving assets, and took NO POSITION to affirm his position publicly in addition to voicing his objection directly to the Receiver by and through his attorneys. If the NO POSITION was assumed to be APPROVAL, Mr. Alexandre hereby clarifies his NO POSITION to: OBJECTS.

Mr. Alexandre assisted the Receiver in "assembling all the accounts" that the Receiver requested "even the ones outside of his jurisdiction, beyond his legal reach," and supported the Receiver's efforts in fighting against every and any claims that would otherwise hurt the EminiFX investors as a result of the actions taken by the Receiver during the dismantling of the EminiFX Real Estate and Digital Assets Portfolios. This is NOT an approval of the imposed SRO nor the Receiver in any form or shape, but a conscious assistance designed to PROTECT the assets of the EminiFX investors that were being endangered and scattered by the SRO and the inexperience of the Receiver propelled into the Leadership of a company he does not understand nor wanted to protect.

Mr. Alexandre undertood from day one that the right thing to do was to assist the Receiver into gathering the EminiFX assets under one umbrella: The EminiFX Estate" for accounting purposes to save what could be salvaged in that orchestrated-debacle arising from this action. Up to date, Mr. Alexandre is still in shock by the devastating effect of the Receiver's actions and the damages of the SRO in this instant action. Mr. Alexandre reserves the rights to address them comprehensively during and after discovery in the pre-trial conference issues phase. Any statements by the CFTC or the Receiver jointly or severally stating otherwise is not accurate. Mr. Alexandre quickly realized he had to get involved to help assemble these assets no matter where they may be located and to protect the EminiFX Estate against any claims, to protect the status quo ante. Mr. Alexandre had no ideas that the Receiver was about to cause such irreversible damages in liquidating the Real Estate portfolio and destroying the Crypto Portfolio. That should have been predictable in hindsight due to the level of inexperience of the Receiver in the sector, albeit shocking. This is why, even though about one thousand (1,000) investors filed a letter opposing the liquidation and destruction of their portfolios, the Receiver, instead of taking notice and change his willingness to destroy the company, looked the other way to find excuses saying in whole and in part that these were just "form-answer", whereas there was no stipulation instructing the EminiFX investors not to use a format at a time where most courts at the State and Federal Government level are encouraging the use of form-submission for uniformity. The Receiver wasted their efforts and abused their voices. After asking the Defendant first, the Receiver said he would asked the members instead. The Receiver ignored the feedback from the Defendant, ignored the investors and did the unbelievable. He destroyed the future of over 35,000 members and their families. Mr. Alexandre reserves

the right to seek relief against such abuse of power. Not surprisingly, the Judge rubber stamped his actions, backed him up; and authorized the sale. Every member of EminiFX is well educated enough into the crypto volatility strategy that was promoted. Mr. Alexandre totally opposed the sale, because no one in his right mind would sell the BTC at its historical LOW when the top investment firms on Wall Street were rolling out Crypto ETFs now fully approved by the SEC, against their primary opposition based on the advice of counsel. Mr. Alexandre held no position in that debacle after voicing his opposition to the sale and was in full agreement with the EminiFX members opposing the Receiver's liquidation. Our collective voices were ignored, and today someone must be held liable for the massive losses that Mr. Alexandre is left to retribute for the rest of his life as a direct result of the ex-parte SRO, and the Receiver's poor judgment or lack of thereof. There is definitely more to this story. Mr. Alexandre has seen Receiver terminated for a lesser offense conduct.

CONCLUSION

After reviewing and responding to all objections raised by the Receiver, and providing more arguments in support of the motion for the return of seized property, and establishing uncontested legal precedents to Honorable Judge Caproni, it is clear that the Receiver, by and through his associates, agents, assigns, contractors, employees, and/or delegates, while acting as a CFTC Court-appointed agent, violated the constitutional rights of Mr. Alexandre on the morning of May 12, 2022, by staking out Mr. Alexandre's private dwelling while waiting to get confirmation from the FBI agents that they have taken possession of Mr. Alexandre and driving to the FBI HQ. Then, the Receiver, knowingly and willfully, conducted a warrantless search and seizure of Mr. Alexandre's home and property under the disguise that he had court paper, while he knew that, "as admitted in his response" Mr. Alexandre was on his way to the FBI headquarters and the Receiver admitted being confused about what(thing) to look for, and from who to conduct the search. Realizing that it was abundantly "UNCLEAR" as to what he was looking for, and or what he would find, he made a bad judgment call to proceed without securing a judicial warrant from the same court who ordered the SRO for the CFTC. See *Conn v. Cabbert*, 526 U.S. 286, L.Ed. 2nd 399, 119 S.Ct. 1292 (1999) stating in whole and in part, prosecutors executed a search warrant of an attorney's office while, at the same time, that very client was testifying in front of a grand jury. Mr. Alexandre contends that this offense was found to be outrageous by the U.S. Supreme Court, and unreasonable, and unlawful.

In the past, this court has found this behavior to be a grave violation. And, more recently, the court reaffirmed the same position that would support a motion to reconsider and grant the motion for the return of seized property without conditions, and declare the warrantless search and seizure unlawful, in violation of the Defendant's Fourth Amendment rights. The honorable Judge Caproni failed to hold the Receiver accountable for his actions, even though the Receiver was willing to quickly put this matter behind him by "returning the laptop with or without conditions," and deal with the emails requests later during discovery, the Judge ignored his request and DENIED the motion without legal basis or legal analysis based on precedents. This appears to be an erroneous interpretation of the Fourth Amendment rights violations of the Defendant. A district court abuses its discretion if it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence, or renders a decision that cannot be located within the range of permissible decisions. See *U.S. v. Harlan*,

26 F.4th 566, 569 (2nd Circ. 2022).

Mr. Alexandre believes that the honorable Judge Caproni erred in finding that the Receiver's search and seizure was lawful in regards to the Fourth Amendment violation claim raised by the Defendant. Hence, there was an error in the DENIAL of the Defendant's motion for return of seize property effectively stating the warrantless search and seizure actions of the Receiver or the morning of May 12, 2022 was in fact beyond the reach of the Fourth Amendment's safeguards and purposes.

WHEREFORE, for the reasons stated in the original motion, and arguments developed as reinforcements above, Mr. Alexandre respectfully requests the court to reconsider the March 25, 2024 Order, Vacate that Order, Adjudicate and GRANT the Motion for Return of Seize Property obtained through a warrantless search and seizure, and declare this warrantless search and seizure unlawful. In the alternative, Mr. Alexandre respectfully requests that the court docket this motion as a Notice of Appeal.

DATED: April 22, 2024

Application DENIED. The standard for a motion for reconsideration "is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked." *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). "[A] motion to reconsider should not be granted where the moving party seeks solely to relitigate an issue already decided." *Id.* As Judge Cronan already held, the Receiver was not part of the prosecution team nor a participant in the FBI's search. Order, *United States v. Alexandre*, No. 22-cr-326, Dkt. 72 at 10. The Court authorized the Receiver to take possession of EminiFX's assets, and Mr. Alexandre's wife voluntarily surrendered the laptop pursuant to that Order. Order, Dkt. 9; Letter, Dkt. 284 at 2. Mr. Alexandre asserts no facts or controlling law meriting reconsideration.

Mr. Alexandre's personal info was never filed publicly; the public documents redacted all confidential information. *See* Dkts. 285-87. To the extent that this motion may be construed as a motion for recusal, there is no no basis for recusal pursuant to 28 U.S.C. § 455. None of the circumstances warranting disqualification enumerated in § 455(b) is present, and there is no ground on which the Undersigned's "impartiality might reasonably be questioned" pursuant to § 455(a). If Mr. Alexandre wishes to file a notice of appeal, he must file the appropriate paperwork, as set forth at nysd.uscourts.gov/forms/notice-appeal-civil-case

The Clerk of Court is respectfully directed to mail the endorsed Order to Mr. Alexandre and to note the mailing on the docket.

Respectfully submitted,

/s/ Eddy Alexandre

Eddy Alexandre, pro se
Reg. No.: 00712-510
ex-CEO, founder of EminiFX, inc.
FCC Allenwood-LOW
P.O. Box 1000
White Deer, PA 17887

SO ORDERED.



05/06/2024

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff,

v.

**EDDY ALEXANDRE and
EMINIFX, INC.,**

Defendants.

Case No.: 22-cv-3822

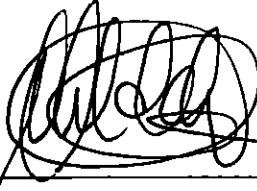
Judge Caproni

CERTIFICATE OF SERVICE

I hereby declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that on this date I caused a true and complete copy of the attached to be served, in placing same in a sealed envelope and routing it for mailing certified, via first class United States mail service, with postage thereon fully prepaid, a true copy thereof to the following interested party/ies:

- 1- The Clerk of Court
United States District Court
Southern District of New York (SDNY)
U.S. Courthouse - 500 Pearl Street
New York, NY 10007
- 2- Douglas G. Snodgrass
Commodity Futures Trading Commission (CFTC)
77 W. Jackson Blvd.
Chicago, IL 60604
- 3- Notice to EminiFX
David Castleman
Court-Appointed Receiver of EminiFX, Inc.
c/o Otterbourg, P.C.
230 Park Avenue
30th Floor
New York, NY 10169

Date: 4 / 22 / 2024



Eddy Alexandre, pro per
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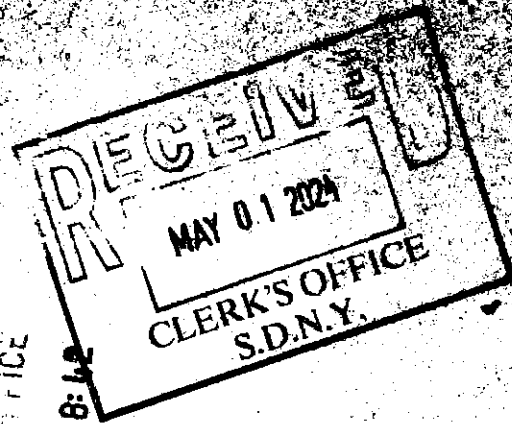
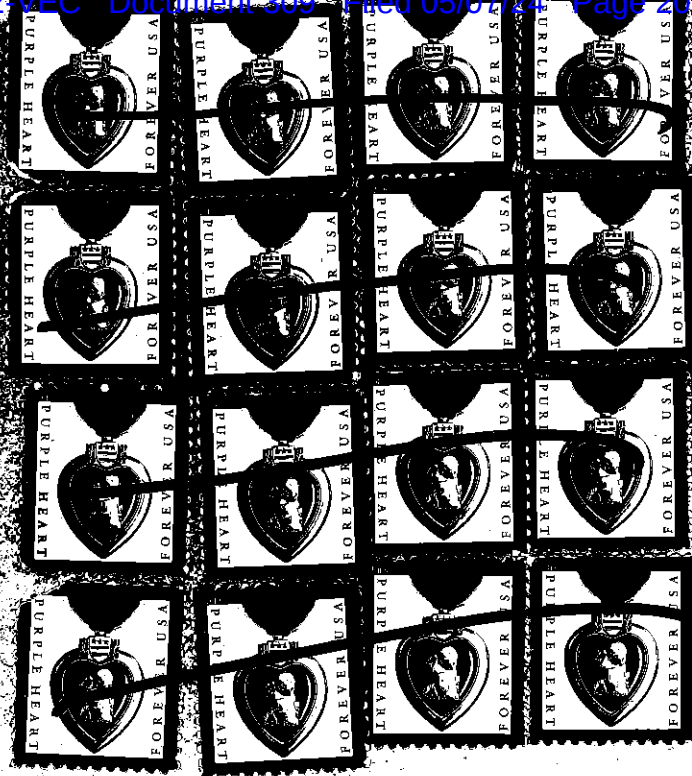
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